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## PRODUCTS LIABILITY

**FRONT LOADER.** The plaintiff had owned a tractor and front-end loader for over 19 years. The plaintiff had altered the front-end loader by soldering on two brackets to hold a bale fork. The plaintiff was injured while transporting a large round hay bale when the loader lifted too high and caused the hay bale to roll back onto the plaintiff in the tractor. The tractor did not have a roll over protection system. The accident was apparently caused by a defective valve on the front-end loader which allowed the loader to rise without control. The plaintiff filed suit against the tractor and front-end loader manufacturer under the Kansas Product Liability Act, Kan. Stat. §§ 60-3301 *et seq.*, for negligence, strict liability and breach of warranty and included a claim for failure to warn. The defendant argued that its liability was extinguished by Kan. Stat. § 60-3302(a) because the tractor and front-end loader were past their useful safe lives. The statute provided a presumption that equipment over 10-years old was past its useful safe life. The plaintiff presented evidence of the equipment's condition and expert testimony that the tractor and front-end loader were not past their useful safe lives. The court held that the plaintiff had presented sufficient evidence of the tractor and front-end loader's condition to make their useful safe life a jury question. On the failure to warn claim, the defendant argued that the plaintiff had sufficient personal knowledge of the dangers involved in carrying large round hay bales to relieve the defendant of any duty to warn. The defendant also argued that the modifications to the front-end loader were sufficient to relieve the defendant of any strict liability. The court noted that, without the modification by the plaintiff, the front-end loader would not have been able to transport large round hay bales and the accident would not have happened. Therefore, the court dismissed the plaintiff's claim in strict liability because of substantial modification of the front-end loader. **Hiner v. Deere & Co., 161 F. Supp.2d 1279 (D. Kan. 2001).**

## PROPERTY

**CONVERSION.** The plaintiffs were co-owners of timberland with the defendant. The defendant had purchased a two-thirds interest in the timber held by

siblings of the plaintiffs and had cut the timber or contracted with others to cut the timber without first obtaining permission from the plaintiffs. The defendant paid the plaintiffs their share of the value of the timber; however, the plaintiffs sued for conversion. The jury agreed with the plaintiffs' valuation of the timber and awarded the plaintiffs the difference between what the defendant paid them and one-third of the true value of the timber, plus the cost of restoration. The defendant argued that, as co-owner, the defendant had the right to harvest the timber. The court upheld the jury verdict. **Dillard v. Wade, 45 S.W.3d 848 (Ark. Ct. App. 2001).**

## SECURED TRANSACTIONS

**PRIORITY.** The debtor had granted a security interest in farm equipment and after-acquired property to a bank in 1985. In 1998, the debtor borrowed money from a creditor to purchase more farm equipment and granted a purchase-money security interest (PMSI) in that equipment to the creditor. The PMSI also contained a future advances clause to cover any additional loans. In 1999, the debtor borrowed additional funds from the creditor and a new promissory note was executed which referred back to the original loan and security interest. The additional funds were used to purchase more farm equipment. The loan amount was increased again in 2000 under the same terms. The PMSI creditor argued that its security interest had priority over the bank's security interest because of operation of Iowa Code 554.9107(b) which provided superpriority to PMSIs. The court held that the "dual status" doctrine applied to the PMSI to allow superpriority status to the security interest to the extent the loan proceeds were attributable to the purchased equipment. To the extent the loan proceeds were used for other purposes, no superpriority was allowed. The court also held that the payments made by the debtor on the loan would be applied first to the first equipment purchases and then to the non-equipment purchase use of the loan proceeds, essentially a first-in first-out method. The court declined to make a final determination because the debtor and creditor had not provided sufficient evidence of the loan's history to determine the extent of funds attributable to the purchase of the farm equipment. **In re McAllister, 267 B.R. 614 (Bankr. N.D. Iowa 2001).**

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